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Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 2001

YELLOW FREIGHT SYSTEM, INC.,

Petitioner,

v

STATE OF MICHIGAN, *ET AL*,

Respondents.

On Petition For Writ Of Certiorari To The Michigan Supreme Court

SUPPLEMENTAL BRIEF FOR THE STATE OF MICHIGAN, *ET AL* IN OPPOSITION

JENNIFER M. GRANHOLM
Attorney General of Michigan

Thomas L. Casey
Solicitor General of Michigan
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

David A. Voges
Henry J. Boynton
Assistant Attorneys General
Attorneys for Respondents

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Statutes

49 USC 11506(c)(2)(B)(iv)(III) [recodified as 49 USC 14504(c)(2)(B)(iv)(III)] 1

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Procedures Manual for the Single State Standards for Registration of Interstate Motor Carrier Operations Under Section 4005, Title IV (July 1, 1994). 2

In accordance with Rule 15.8, the Respondents State of Michigan, *et al* submit this Supplemental Brief in response to the Brief of the United States as Amicus Curiae that was filed on January 2, 2002 and subsequent to Michigan's Brief in Opposition.

1. Michigan will not and cannot prospectively increase its fees.

In its brief, the United States argues that the petition for certiorari should be granted but limited to the question of whether the Michigan Supreme Court erred in its statutory construction of 49 USC 11506(c)(2)(B)(iv)(III) [recodified as 49 USC 14504(c)(2)(B)(iv)(III)]. The State of Michigan disagrees and continues to believe that the Michigan Supreme Court did not err and that the correct result was reached. The United States argues that this issue is of considerable importance because the "Michigan Supreme Court's decision would seem prospectively to allow Michigan to charge *all* interstate carriers a fee of ten dollars per vehicle for *all* trucks that enter Michigan" United States brief, p. 11 (emphasis in original). The United States then concludes that if "Michigan eliminated all those fee waivers, then the decision below would result in significant fee increases for the trucking industry even if no other State followed Michigan's lead." United States brief, p. 12. However, Michigan will not and cannot prospectively increase its fees.

Michigan states unequivocally that it has no intention whatsoever to eliminate the fee waivers currently in place. Simply put, Michigan will continue to honor all fees waivers currently in place. Thus, contrary to the concern voiced in the United States' brief there will be no increase in fees in Michigan.

Moreover, Michigan submits that neither it, nor any state participating in the Single State Registration System (SSRS) can henceforth begin charging and collecting a $10.00 fee from all interstate vehicles. This is because Michigan and

all other states participating in the SSRS Program are required to follow the SSRS Procedures Manual, *Procedures Manual for the Single State Standards for Registration of Interstate Motor Carrier Operations Under Section 4005, Title IV* (July 1, 1994).[1] At p. 21 of that manual, it states:

> XIII. RECIPROCITY
>
> A. Reciprocity agreement(s) in effect as of November 15, 1991 must be considered when determining fees to be charged under this program.

If Michigan were to cancel all reciprocity agreements and then attempt to collect a $10.00 fee from all interstate motor carrier vehicles, it would violate XIII. A. of the SSRS Procedures Manual. Participation in the SSRS Program is conditioned on compliance with the standards set forth in the SSRS Procedures Manual. *See,* SSRS Procedures Manual, III. B., p. 3. Failure to comply would lead to Michigan's expulsion from the SSRS Program and forfeiture of the ability to collect any such fees.

The United States, in a footnote on page 12 of its brief notes these SSRS Procedures Manual requirements, but concludes that such requirements do not have the force of law and apparently does not view it as precluding Michigan from increasing its fees.

To the contrary, Michigan believes it is bound by the requirements of the SSRS Procedures Manual. Moreover, the Michigan Court of Appeals, in a recent decision approved of the Michigan Public Service Commission's use of the SSRS Procedures Manual. In *Schneider National Carriers v State of Michigan,* ___ Mich App ___; ___ NW2d ___; 2001 Mich LEXIS 205 (2001) (application for leave to appeal to Michigan Supreme Court applied for), the MPSC followed the SSRS

[1] Copies of the SSRS Procedures Manual have been lodged with the Clerk.

Procedures Manual in requiring the filing of proof of insurance and in assessing a $10 fee for the filing. The plaintiffs asserted that the MPSC lacked express statutory authority to collect the fee. As noted by the Court, "The crux of the dispute is whether the MPSC had the authority to modify its procedures to comply with the SSRS without statutory authorization from the Legislature." The Court of Appeals held that it did, thus recognizing the legally binding effect of the SSRS Procedures Manual. Therefore, despite the Michigan Supreme Court's decision below, Michigan, or for that matter any state participating in the SSRS Program, cannot increase the amount of the fees now being charged to interstate vehicles. To do otherwise would no doubt subject such a State to lawsuits by other States as well as lawsuits by other motor carriers.

2. This case is effectively moot since Congress in the ICC Revocation Act of 1995 has commanded the Secretary of Transportation to replace the SSRS Program.

Michigan further submits that certiorari is not warranted because a change in the law effectively renders this matter moot. In a footnote on page 14 of the United States' brief it is noted that Congress has "authorized the Secretary of Transportation to adopt new regulations that could modify or terminate the Single State Registration System. 49 USC 13908 (Supp V 1999)." Congress, however, did more than merely "authorize" the Secretary to "modify" the SSRS. Reference to that statutory provision, which was contained in the ICC Termination Act of 1995, presents a far more critical impact than the United States' brief suggests. In short, Congress commanded that the Secretary replace the SSRS by a date certain.

Section 13908(a) of the ICC Termination Act of 1995, PL 104-88, at 109 Stat 888-889, states that:

> (a) REGULATIONS REPLACING CERTAIN PROGRAMS- *The Secretary*, in

> cooperation with the States, and after notice and opportunity for public comment *shall* issue regulations to *replace* the current Department of Transportation identification number system, *the single State registration system under section* 14504, the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, on-line, Federal system. (Emphasis added).

Section 13908(e) of the ICC Termination Act of 1995 requires the Secretary to conclude rulemaking within 24 months after the effective date of Section 13908. The ICC Termination Act of 1995 became effective December 29, 1995, thus regulations should have been promulgated by December, 1997, over 4 years ago. Additionally, Section 13908(d)(1) provides that each State will receive at least as much revenue as that State received in fiscal year 1995. Thus, any grant of review by this Court could jeopardize the revenue stream guaranteed to Michigan under the ICC Termination Act of 1995. While the U.S. Department of Transportation has not promulgated such regulations, the foregoing mandate remains in effect. In any event, since Congress has commanded that the current SSRS is to be replaced, review of this case by this Court is not warranted.

CONCLUSION

For the reasons set forth herein and for those reasons set forth in its Brief in Opposition, the State of Michigan, *et al,* respectfully request that this Honorable Court deny the Petition for *Certiorari.*

Respectfully submitted

JENNIFER M. GRANHOLM
Attorney General

Thomas L. Casey
Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
Telephone: (517) 373-1124

David A. Voges
Henry J. Boynton
Assistant Attorneys General
Attorneys for Respondents

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